



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Ward/Hall Associates AIA

File: B-226714

Date: June 17, 1987

DIGEST

1. Protest that agency evaluation was inconsistent with published evaluation criteria because the agency used unpublished subfactors in evaluating proposals is denied where the only subfactors used were encompassed by the advertised evaluation criteria.
2. Protest that selected firm is less qualified than the protester is denied where record does not demonstrate that the agency's evaluation of proposals was unreasonable.
3. General Accounting Office generally will not review the qualifications of contracting personnel.

DECISION

Ward/Hall Associates AIA protests the Department of the Army's selection of Metcalf and Associates to perform architect-engineering (A-E) services in connection with the construction of administrative facilities at the National Guard Center in Arlington, Virginia. The protester principally asserts that the Army failed to evaluate proposals in accordance with the stated evaluation criteria, and that Ward/Hall is better qualified to perform the services than is the selected firm. We deny the protest in part and we dismiss it in part.

Procurements of A-E services are conducted pursuant to the Brooks Act, 40 U.S.C. §§ 541-544 (1982), and the implementing Federal Acquisition Regulation (FAR), 48 C.F.R. subpart 36.6 (1985). Under these procedures, after publicly announcing a requirement, the contracting agency convenes an evaluation board that reviews performance data and statements of qualifications submitted in response to the announcement, as well as data already filed by firms that wish to be considered for A-E contracts. The board then holds discussions with no less than three of the firms; ranks them; and submits the firms' qualifications to a

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selection official, who determines the most highly qualified offeror. If the agency is not able to negotiate a satisfactory contract at a fair and reasonable price with the preferred offeror, the agency enters into negotiations with the next ranked firm, and so on. See Page, Anderson & Turnbull, Inc., B-223849, Oct. 14, 1986, 86-2 ¶ 427.

The Army published an announcement for this project in the Commerce Business Daily (CBD) on January 27, 1987. The notice stated that the following criteria would be utilized to select the most highly qualified firms: (1) professional qualifications of the staff to be assigned to the project necessary for satisfactory performance of the required services; (2) specialized experience and technical competence in designing large scale administrative and office complexes; (3) capacity to accomplish the work in the required time; (4) past performance on contracts with government agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules; (5) location in the geographical area of the project and knowledge of the locality of the project; and (6) volume of work previously awarded to the firm by the Department of Defense.

Fifty-four firms responded, and a selection board selected six of them to be interviewed. On March 18, the Army orally notified these six firms that the interviews would take place on March 30. After the interviews were completed, Metcalf was ranked first and Ward/Hall was ranked third. Subsequently, the contracting officer notified Ward/Hall that it had not been selected for negotiations.^{1/}

Ward/Hall first protests that the Army must have used evaluation criteria other than those stated in the CBD to rate the final six firms. In response, the Army states that the selection criteria used to rank the six firms interviewed were the same factors published in the CBD notice, along with some subfactors that were not published in the notice but that are related to the published criteria. Ward/Hall concedes that the Army validly could use subfactors to evaluate proposals, but only if they are relevant and properly interpreted by the selection committee.

^{1/} In its report, the Army acknowledges that Ward/Hall should not have been notified that it was not selected since negotiations have not yet been completed with Metcalf, so that Ward/Hall technically could still receive an award if neither Metcalf nor the second-ranked firm was able to reach an agreement with the agency.

Ward/Hall also argues that the subfactors should have been made known to the firms that were being interviewed so that the firms would have an opportunity to address any questions these subfactors might raise concerning the firms' qualifications.

We consistently have held that while an award may not be based on factors that prospective offerors were not advised would be considered, we will not object to an agency's consideration of subfactors not specifically identified where such subfactors are reasonably related to, or encompassed by, the specified evaluation criteria. Oceanprobe, Inc., B-221222, Feb. 26, 1986, 86-1 C.P.D. ¶ 197.

The Army has not revealed the subfactors that it considered to the protester, so we have reviewed them in camera.^{2/} Contrary to Ward/Hall's speculation, the only subfactors used were under the "professional qualifications of the staff" criterion and, as the Army points out, consisted solely of a breakdown and accompanying scoring of the various types of professionals (e.g., architects and civil engineers) it expected offerors to propose to work on the project. These subfactors clearly are related to the professional qualifications factor; indeed, we believe an offeror reasonably should have anticipated just such an evaluation of its proposed staff. Under these circumstances, the fact that the Army considered these subfactors without revealing them to the six firms being interviewed is not legally objectionable. Loschky, Marquardt & Nesholm, B-222606, Sept. 23, 1986, 86-2 C.P.D. ¶ 336.

Ward/Hall also asserts that it is more qualified than Metcalf and suggests that an investigation of that firm's qualifications will demonstrate serious weaknesses in Metcalf's ability to perform the contract. In reviewing a protest of an agency's selection of a contractor for A-E

^{2/} Ward/Hall has requested that we require the Army to reveal the specific point scores assigned to Ward/Hall and to Metcalf, and the information that Metcalf provided during the interview. Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(f) (Supp. III 1985), however, protesters and other interested parties are not entitled to documents related to a protested procurement that would give one or more parties a competitive advantage or which the parties are not otherwise authorized to receive, and the Army has determined that to be the case here. Nevertheless, our decision in a protest is based on the entire written record, not merely those portions provided to the protester.

services, our function is not to reevaluate the offeror's capabilities or to make our own determination of the relative merits of competing firms. Rather, the procuring officials enjoy a reasonable degree of discretion in evaluating the submissions and we limit our review to determining whether the agency's selection was reasonable and in accordance with the published criteria. Power Line Models, Inc., B-220381, Feb. 28, 1986, 86-1 C.P.D. ¶ 208. The protester bears the burden of proving that the agency's evaluation was unreasonable, and that burden is not met by the protester's mere disagreement with the agency's evaluation. Id.

Our review of the evaluation documents here demonstrates that, although the evaluators differed regarding the relative strengths and weaknesses of each firm, and although the three highest-ranked firms, including Ward/Hall, were scored close technically, Metcalf was scored slightly higher than Ward/Hall overall. It appears from the record that the evaluation was conducted in accordance with the advertised guidelines, and we find nothing that would lead us to question the evaluation results.

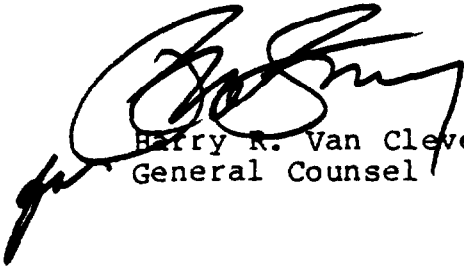
Ward/Hall raises a number of other alleged improprieties in the selection process. Specifically, the protester questions the composition and qualifications of the members of the evaluation panel, and complains about the ineffective manner in which its interview was conducted, including the fact that a member of the selection panel left Ward/Hall's interview before the firm completed its presentation.

We will not consider these issues. We first point out that our Office will not become involved in appraising the qualifications of contracting personnel involved in the technical evaluation of offers absent a showing of fraud, conflict of interest or actual bias on the part of the evaluators, factors which are not evident in this case. Petro-Engineering, Inc., B-218255.2, June 12, 1985, 85-1 C.P.D. ¶ 677.

Ward/Hall's argument regarding the interview process is untimely. Under our Bid Protest Regulations, a protest based on other than an apparent solicitation impropriety must be filed within 10 working days after the protester knows the basis of its protest. 4 C.F.R. § 21.2(a)(2) (1986). Ward/Hall learned this protest basis at the March 30 interview but did not raise it until May 14, when

it submitted its comments on the Army's report.
Consequently, we will not consider this issue.

The protest is denied in part and dismissed in part.



Harry R. Van Cleve
General Counsel